

STATE OF WISCONSIN

PERSONNEL COMMISSION

ALLISON MUELLER,
Appellant,

v.

**Secretary, DEPARTMENT OF
CORRECTIONS,**
Respondent.

DECISION
AND
ORDER

Case No. 97-0010-PC

NATURE OF CASE

This is an appeal pursuant to §230.44(1)(d), Stats., of respondent's decision to rescind its offer of employment to appellant, claiming the respondent's action was illegal or an abuse of discretion.

BACKGROUND

The evidentiary hearing was commenced as scheduled on June 3, 1997. As a preliminary matter, prior to opening statements, the appellant advised the hearing examiner that she could not proceed. Respondent moved for dismissal on the basis of appellant's failure to prosecute.

In response, appellant argued that she had requested a continuance. On May 21, 1997, appellant telephoned the Commission, left a message that she needed to reschedule the hearing because a meeting she was supposed to have before the hearing was postponed until June 4, 1997. Attempting but failing to contact appellant by telephone, the hearing examiner, by letter dated May 23, 1997, advised appellant that he could not rule on her request without more information from appellant and without providing respondent with opportunity for input. He then advised appellant of the Commission's procedure for requesting a continuance, as contained in §PC 5.02, Wis. Adm. Code.

The next contact by appellant with the Commission was May 28, 1997. At 4:04 p.m. appellant telephoned the Commission's office, and left a message requesting the

hearing examiner to call her before 4:30 p.m. The hearing examiner telephoned appellant as requested and talked with her approximately twenty minutes about the procedure for requesting a continuance. She said she had not received the letter from the examiner addressing this issue. Before concluding the conversation, the examiner advised appellant that he was not granting the continuance and that her case was still scheduled for hearing on June 3, 1997. There is no record of any subsequent contact by appellant with the Commission prior to her appearance at the hearing.

Following appellant's response, which included a renewal of her request for a continuance but no additional information relating to the basis for her request or to the relationship between the meeting scheduled with a staff person for the DVR and her ability to proceed, the examiner considered appellant's request and advised the parties that he had no authority to decide respondent's motion, but that he would recommend dismissal to the Commission.

ORDER

Respondent's motion to dismiss is granted, and the appeal is dismissed for failure to prosecute.

Dated: June 19, 1997.

DRM:rjb
970010Adec1

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Allison Mueller
W5016 County Highway O
Endeavor WI 53930

Michael J. Sullivan
Secretary, DOC
PO Box 7925
Madison, WI 53707-7925

NOTICE
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.) 2/3/95